

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ARTIE J. ALLEN,	:	CIVIL ACTION NO. 1:07-CV-1720
	:	
Plaintiff	:	(Judge Conner)
	:	
v.	:	
	:	
DOMINICK DeROSE, TOM	:	
TOOLAN, DR. DRUE WAGNER,	:	
UNIDENTIFIED BLOCK OFFICERS	:	
OF DAUPHIN COUNTY JAIL,	:	
	:	
Defendants	:	

ORDER

AND NOW, this 23rd day of July, 2009, upon consideration of the report of the magistrate judge (Doc. 42), recommending that defendants Block Officers be dismissed from the above-captioned action pursuant to Rule 4(m) of the Federal Rules of Civil Procedure and that the case be remanded to the magistrate judge, and it appearing that plaintiff filed suit on September 24, 2007, and that he failed to identify the Block Officers and effectuate service within the 120-day time period allotted by Rule 4(m), and it further appearing that the magistrate judge granted plaintiff an extension to identify and serve the Block Officers on or before

April 16, 2009,¹ that plaintiff did not do so within this time (Doc. 31), and that the magistrate judge informed plaintiff that these defendants would be dismissed unless plaintiff satisfactorily served them, (Doc. 31 at 2), it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 42) is ADOPTED.
2. The claims against defendants Block Officers are DISMISSED. See FED. R. CIV. P. 4(m).
3. The above-captioned matter is REMANDED to the magistrate judge for further proceedings.

S/ Christopher C. Conner
CHRISTOPHER C. CONNER
United States District Judge

¹ By order dated January 15, 2009 (Doc. 27), the magistrate judge instructed the plaintiff to show cause why defendants Block Officers should not be dismissed under Rule 4(m). Plaintiff responded that he needed additional discovery to identify the Block Officers. (Doc. 28 at 3-4.) The magistrate judge then extended the discovery deadline to April 9, 2009, with instructions that plaintiff name the Block Officers on or before April 16, 2009. (Doc. 31.) On April 15, 2009, plaintiff filed a document captioned “Dispositive Motion & Motion to Compel Discovery.” (Doc. 32.) In this motion, plaintiff stated that he served the other named defendants with a discovery request dated March 31, 2009 inquiring about the identity of the fictitiously named Block Officers. (Id. at 1.) By a separate order (Doc. 41), the magistrate judge deemed the motion withdrawn pursuant to Local Rule 7.5. The magistrate judge alternatively noted that plaintiff’s discovery request was untimely because he served it only two weeks before the close of the discovery period. Rule 34 of the Federal Rules of Civil Procedure requires that a party serving a production request afford the opposing party thirty days to respond to the request. See FED. R. CIV. P. 34 (b)(2)(A). Thus, plaintiff failed to serve the request in a manner that allowed defendants a full opportunity to respond.